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April 4, 2005

The Honorable James K. Bredar
United States Magistrate Judge
United States District Court
for the District of Maryland
Garmatz Federal Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

Re: *In the Matter of the Complaint of Eternity Shipping Ltd., et al.*
For Exoneration from or Limitation of Liability
Civil Action No. L-01-CV-0250

Dear Judge Bredar:

We represent the American Bureau of Shipping ("ABS") and write in response to the letter submitted by counsel for Tate & Lyle *et al.* dated April 1, 2005 with respect to the captioned matter. We are authorized to state that counsel for Limitation Plaintiffs Eurocarriers and Eternity Shipping join in this letter.

Preliminarily, we note that Your Honor's Memorandum and Order dated February 24, 2005 directed that any motion for modification of the discovery schedule was to be directed to Chief Judge Legg (Memorandum, p.3). We understand that Chief Judge Legg will receive a copy of this letter through the Court's electronic filing system, as will all counsel.

In our discussions with counsel regarding an extension to the discovery schedule, we indicated that we have no objection to the deposition of Captain Heiner Popp – Eurocarrier's surveyor who attended the M/V LEON I after the casualty. Likewise, we did not object when Tate & Lyle's counsel indicated a desire to pursue the deposition of Bosun Balita, the crew member operating the M/V LEON I's crane at the time of the casualty, even though the deposition has nothing at all to do with the condition of the wire rope at issue.



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Regarding the wire rope, it should be noted that Tate & Lyle performed two inspections via its experts of the wire rope prior to filing its spoliation motion. As indicated in the motion papers, Mr. Mike Parnell performed the second inspection, and Tate & Lyle has represented to us that Mr. Parnell will serve as a rebuttal witness.

We did not understand your Honor's February 24, 2005 Memorandum to be an open invitation "to allow Tate & Lyle to establish its own expert evidence on the wire rope issue" as Tate & Lyle posits in its letter and, even if it did, none of the proposed further discovery is related to that issue.

Insofar as the ABS motion for summary judgment is concerned, the central point is that no evidence exists that the wire rope was defective or did not meet ABS requirements *at the time of the ABS survey*, which was several months before the casualty. In the interim, the vessel and its cargo gear were in service.

As mentioned, none of the proposed discovery even addresses this issue. We further note that motion practice with respect to the summary judgment motions was delayed once, and pleadings needed to be re-filed because Tate & Lyle introduced inadmissible evidence in its papers. Tate & Lyle has not identified any issue related to the alleged spoliation that might affect the motions for summary judgment. To allow additional submissions after further discovery and after motions for summary judgment have been fully submitted will cause duplication of effort and unnecessary delay. We respectfully submit Chief Judge Legg, in the pending motions for summary judgment and the responses thereto, has all of the relevant evidence necessary to rule on those motions.

Therefore, on behalf of ABS and Limitation Plaintiffs we object to any suggestion that Chief Judge Legg should delay ruling on the pending motions for summary judgment until after the proposed extended discovery period.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "James W. Bartlett, III", with a stylized flourish at the end.

James W. Bartlett, III

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cc: The Honorable Benson E. Legg (via electronic filing)
All counsel (via electronic filing)

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